

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 122, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.130-2002,
4 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2003]: Sec. 4. The following are hereby defined as unfair
6 methods of competition and unfair and deceptive acts and practices in
7 the business of insurance:
8 (1) Making, issuing, circulating, or causing to be made, issued, or
9 circulated, any estimate, illustration, circular, or statement:
10 (A) misrepresenting the terms of any policy issued or to be
11 issued or the benefits or advantages promised thereby or the
12 dividends or share of the surplus to be received thereon;
13 (B) making any false or misleading statement as to the
14 dividends or share of surplus previously paid on similar
15 policies;
16 (C) making any misleading representation or any
17 misrepresentation as to the financial condition of any insurer,
18 or as to the legal reserve system upon which any life insurer
19 operates;
20 (D) using any name or title of any policy or class of policies
21 misrepresenting the true nature thereof; or

- 1 (E) making any misrepresentation to any policyholder insured
2 in any company for the purpose of inducing or tending to
3 induce such policyholder to lapse, forfeit, or surrender his
4 insurance.
- 5 (2) Making, publishing, disseminating, circulating, or placing
6 before the public, or causing, directly or indirectly, to be made,
7 published, disseminated, circulated, or placed before the public,
8 in a newspaper, magazine, or other publication, or in the form of
9 a notice, circular, pamphlet, letter, or poster, or over any radio or
10 television station, or in any other way, an advertisement,
11 announcement, or statement containing any assertion,
12 representation, or statement with respect to any person in the
13 conduct of his insurance business, which is untrue, deceptive, or
14 misleading.
- 15 (3) Making, publishing, disseminating, or circulating, directly or
16 indirectly, or aiding, abetting, or encouraging the making,
17 publishing, disseminating, or circulating of any oral or written
18 statement or any pamphlet, circular, article, or literature which is
19 false, or maliciously critical of or derogatory to the financial
20 condition of an insurer, and which is calculated to injure any
21 person engaged in the business of insurance.
- 22 (4) Entering into any agreement to commit, or individually or by
23 a concerted action committing any act of boycott, coercion, or
24 intimidation resulting or tending to result in unreasonable
25 restraint of, or a monopoly in, the business of insurance.
- 26 (5) Filing with any supervisory or other public official, or making,
27 publishing, disseminating, circulating, or delivering to any person,
28 or placing before the public, or causing directly or indirectly, to
29 be made, published, disseminated, circulated, delivered to any
30 person, or placed before the public, any false statement of
31 financial condition of an insurer with intent to deceive. Making
32 any false entry in any book, report, or statement of any insurer
33 with intent to deceive any agent or examiner lawfully appointed
34 to examine into its condition or into any of its affairs, or any
35 public official to which such insurer is required by law to report,
36 or which has authority by law to examine into its condition or into
37 any of its affairs, or, with like intent, willfully omitting to make a
38 true entry of any material fact pertaining to the business of such
39 insurer in any book, report, or statement of such insurer.
- 40 (6) Issuing or delivering or permitting agents, officers, or
41 employees to issue or deliver, agency company stock or other
42 capital stock, or benefit certificates or shares in any common law

corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A) and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or

1 permitting any excessive, inadequate, or unfairly discriminatory
2 charge or rate or any charge or rate determined by the department
3 or commissioner to meet the requirements of any other insurance
4 rate regulatory law of this state.

5 (8) Except as otherwise expressly provided by law, knowingly
6 permitting or offering to make or making any contract or policy
7 of insurance of any kind or kinds whatsoever, including but not in
8 limitation, life annuities, or agreement as to such contract or
9 policy other than as plainly expressed in such contract or policy
10 issued thereon, or paying or allowing, or giving or offering to pay,
11 allow, or give, directly or indirectly, as inducement to such
12 insurance, or annuity, any rebate of premiums payable on the
13 contract, or any special favor or advantage in the dividends,
14 savings, or other benefits thereon, or any valuable consideration
15 or inducement whatever not specified in the contract or policy; or
16 giving, or selling, or purchasing or offering to give, sell, or
17 purchase as inducement to such insurance or annuity or in
18 connection therewith, any stocks, bonds, or other securities of any
19 insurance company or other corporation, association, limited
20 liability company, or partnership, or any dividends, savings, or
21 profits accrued thereon, or anything of value whatsoever not
22 specified in the contract. Nothing in this subdivision and
23 subdivision (7) shall be construed as including within the
24 definition of discrimination or rebates any of the following
25 practices:

26 (A) Paying bonuses to policyholders or otherwise abating their
27 premiums in whole or in part out of surplus accumulated from
28 nonparticipating insurance, so long as any such bonuses or
29 abatement of premiums are fair and equitable to policyholders
30 and for the best interests of the company and its policyholders.

31 (B) In the case of life insurance policies issued on the
32 industrial debit plan, making allowance to policyholders who
33 have continuously for a specified period made premium
34 payments directly to an office of the insurer in an amount
35 which fairly represents the saving in collection expense.

36 (C) Readjustment of the rate of premium for a group insurance
37 policy based on the loss or expense experience thereunder, at
38 the end of the first year or of any subsequent year of insurance
39 thereunder, which may be made retroactive only for such
40 policy year.

41 (D) Paying by an insurer or agent thereof duly licensed as such
42 under the laws of this state of money, commission, or

brokerage, or giving or allowing by an insurer or such licensed agent thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, agent, or solicitor duly licensed under the laws of this state, but such broker, agent, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance agent or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of its or his right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of agents or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, agent, or broker or brokers. However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon, of his, her, or its right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated

1 experience.

2 (16) Committing or performing, with such frequency as to
3 indicate a general practice, unfair claim settlement practices (as
4 defined in section 4.5 of this chapter).

5 (17) Between policy renewal dates, unilaterally canceling an
6 individual's coverage under an individual or group health
7 insurance policy solely because of the individual's medical or
8 physical condition.

9 (18) Using a policy form or rider that would permit a cancellation
10 of coverage as described in subdivision (17).

11 (19) Violating IC 27-1-22-25 or IC 27-1-22-26 concerning motor
12 vehicle insurance rates.

13 (20) Violating IC 27-8-21-2 concerning advertisements referring
14 to interest rate guarantees.

15 (21) Violating IC 27-8-24.3 concerning insurance and health plan
16 coverage for victims of abuse.

17 (22) Violating IC 27-8-26 concerning genetic screening or testing.

18 (23) Violating IC 27-1-15.6-3(b) concerning licensure of
19 insurance producers.

20 (24) Violating IC 27-1-38 concerning depository institutions.

21 **(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning**
22 **the resolution of an appealed grievance decision."**

23 Page 2, line 26, delete ", " and insert ".".

24 Page 2, delete lines 27 through 33, begin a new line blocked left and
25 insert:

26 **"An insurer that violates this subsection commits an unfair and**
27 **deceptive act or practice in the business of insurance under**
28 **IC 27-4-1-4.**

29 **(d) If an insurer violates subsection (c), the insurer shall file a**
30 **report with the department during the quarter in which the**
31 **violation occurred concerning the insurer's compliance with**
32 **subsection (c). The report must include the following:**

33 **(1) The number of appealed grievance decisions that were not**
34 **resolved as required under subsection (c).**

35 **(2) The reason each appeal described in subdivision (1) was**
36 **not resolved."**

37 Page 2, line 34, strike "(d)" and insert "(e)".

38 Page 2, line 39, strike "(e)" and insert "(f)".

39 Page 4, line 12, delete ", unless the enrollee or subscriber" and insert
40 **". A health maintenance organization that violates this subsection**
41 **commits an unfair and deceptive act or practice in the business of**
42 **insurance under IC 27-4-1-4."**

- 1 Page 4, delete lines 13 through 18.
- 2 Page 4, line 19, after "(d)" insert "**A health maintenance**
- 3 **organization shall file a quarterly report with the department**
- 4 **concerning the insurer's compliance with subsection (c). The report**
- 5 **must include the following:**
- 6 (1) **The number of appealed grievance decisions that were not**
- 7 **resolved as required under subsection (c).**
- 8 (2) **The reason each appeal described in subdivision (1) was**
- 9 **not resolved.**
- 10 **(e)".**
- 11 Page 4, line 23, strike "(e)" and insert "**(f)**".
- 12 Renumber all SECTIONS consecutively.
- (Reference is to SB 122 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 8, Nays 0.

Senator Miller, Chairperson